

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO:242 of 2001

BETWEEN

Peter Clarke

Claimant

v

The Attorney General et al

Defendants

Appearances

Ms. Petra Nelson for Claimant

Ms. Vicki Ann Ellis for Defendants

2003: May 12

May 15

JUDGMENT

[1] **Shanks J:** In this case Mr. Clarke sues the Attorney General and a police officer for an alleged unlawful assault and false imprisonment which took place on 2nd November 1998, and for a malicious prosecution which started on 4th November 1998 and was struck out on 30th November 2000. Mr. Clarke issued proceedings on 16th March 2001. It is the Defendants' case that the action in relation to the assault and false imprisonment is prescribed by Article 2124 of the Civil Code (see paragraph 1 of the Defence and Counterclaim). On 1st November 2002 the Chief Justice ordered that a preliminary trial be held to determine that issue. Although a trial was ordered, neither party put in evidence, Ms. Ellis for the Defendants stated in her skeleton argument (see last page) that her clients

“ . . . are **clearly** entitled to protection which Article 2124 of the Civil Code affords . . .[and] that the claim in so far as the action for assault and false imprisonment be dismissed” (my emphasis) and both attorneys have in effect treated the hearing as an application under CPR 26.3(1)(b) to strike out the statement of claim (or the relevant parts thereof) as not disclosing any reasonable ground for bringing the claim. Given that both parties proceeded on this basis, I shall deal with the matter as if it was such an application, although I am not sure if this was the intention of the Chief Justice’s order.

[2] Article 2124 provides:

“Actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by six months.”

It is common ground that the effect of the section is to extinguish the right, as opposed to providing a procedural defence (see Article 2129). There is no doubt that Mr. Clarke’s claim arises out of an act done by a public officer in respect of his public duty and that his action commenced more than six months after the assault and false imprisonment on 2nd November 1998. The only way in which his claims for assault and false imprisonment are not prescribed under Article 2124 will therefore be if the officer was not acting “ in good faith”. As to that, Article 2066 of the Code provides:

“Good faith is always presumed.

He one alleges bad faith must prove it”.

It is therefore clear that in order to succeed in his claim Mr. Clarke will at least have to prove bad faith and that for his statement of claim to disclose reasonable grounds it must contain an allegation that the relevant acts were done in bad faith.

[3] The statement of claim (which was filed under the old rules) contains the following allegations:

- "3. On or about 2nd November 1996 . . . the second Defendant did unlawfully assault . . . the Plaintiff and . . . arrested and imprisoned him . . .
4. The Plaintiff remained falsely imprisoned until . . . 4th November 1998, wherein the Defendant maliciously and without reasonable cause laid false charges . . . against the Plaintiff.
5. The second Defendant maliciously and without reasonable cause continued to prosecute the . . . charges . . .

Particulars

The second Defendant knows (sic) that the Plaintiff had not committed any offence nor was there any reasonable cause to arrest him . . .

6. Further in acting as alleged aforesaid . . . the Second Defendant was activated by malevolence or spite towards the Plaintiff and he intended to and did humiliate the Plaintiff in public and subjected the Plaintiff to ridicule and contempt in the public view . . ."

[4] It seems to me that the issue I must resolve is whether those allegations disclose a case that the officer was not acting in good faith when he assaulted and arrested the Claimant. I do not think that the mere allegations of unlawful assault and false imprisonment by themselves are sufficient to disclose such a case since it is possible to assault someone by using excessive force in self-defence in circumstances where there may be no bad faith and it is possible to falsely imprison someone by arresting them without having reasonable grounds for suspecting them but nevertheless in good faith. However, there are also

contained in the statement of case the allegation that the officer knew the Plaintiff had committed no offence (in the particulars of paragraph 5) and the express allegation of malevolence and spite and an intention to humiliate the Plaintiff (in paragraph 6). These allegations are perhaps not made with the degree of detail or clarity that one would expect of such allegations, but it seems to me that they inevitably involve an allegation of lack of good faith in respect of the assault and arrest and, accordingly, that if they were proved at trial, it would be established that Mr. Clarke's right of action had not been extinguished. I cannot say therefore that the statement of case discloses no reasonable grounds for bringing the case and I am not therefore prepared to strike out the claims for assault and false imprisonment.

- [5] Ms. Ellis for the Defendants legitimately complained about the lack of clarity and detail in the statement of case. There is no rule in the CPR (which certainly apply to this case: see CPR 73.2(2)) equivalent to the provision in the old English Rules of the Supreme Court requiring particulars of facts relied on in support of an allegation of fraud or malice to be pleaded (see: RSC Ord. 18 rule 12). The CPR only require the Claimant to set out "all the facts on which [he] relies" (CPR 8.7 (1)) and state that the statement "must be as short as practicable" (CPR 8.7 (2)). Nevertheless it is probably good practice, as I have indicated, to give more details of an allegation of bad faith in relation to Art. 2124 in the statement of case than has been supplied here. During the hearing I was contemplating directing the Claimant to amend his statement of case or to supply further information about it to the Defendants. Ms. Ellis submitted that it would be wrong to order or allow an amendment because it would deprive the Defendants of an accrued prescription defence. This submission was, in my judgment, misconceived. If there was indeed bad faith on the part

of the officer and this is established at trial the prescription period is three years (Art 2122(2)) not six months. Ordering or allowing an amendment would not deprive the Defendants of an accrued prescription defence at all: it would supply them with additional details of the case they have to meet.

[6] On consideration, however, and notwithstanding this conclusion, I think that requiring further pleading will cause unnecessary delay and expense. Instead I shall order sequential service of witness statements. I will accordingly order that the Claimant serves his witness statements by 30th May 2003 and that he sets out all the evidence he will rely on in support of the allegation of bad faith which I have mentioned in paragraph 4 above. The Defendants shall serve their witness statements in response by 20th June 2003. If, on seeing the Claimant's statements, the Attorney General is of the view that the Claimant has no real prospect of succeeding in showing bad faith it would be open to him to apply for summary judgment under CPR Part 15 (I should not be taken as encouraging such a course). I will make no further directions for the moment and leave it to the Claimant to apply for a date for trial once all the witness statements have been served. Given my comments about the Claimant's statement of case I would not propose to make any order for costs of the hearing but I will hear counsel on the issue should they wish. The Claimant's attorney is to file a draft order by 16th May 2003.

[7] Before concluding I should stress that this decision is in no way determinative of the prescription issue. It remains for the Claimant to prove on the evidence that the officer was acting in bad faith and he will have to prove this as well as all the other ingredients of unlawful assault or wrongful arrest if he is to succeed on those claims at trial.

**Murray Shanks
High Court Judge (Ag.)**